

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE M. WRIGHT,

Plaintiff-Appellee,

v

LOTTIE TREFFRY,

Defendant-Appellant.

UNPUBLISHED

April 23, 2002

No. 228916

Cheboygan Circuit Court

LC No. 98-001508-DO

Before: Gage, P.J., and Griffin and G. S. Buth*, JJ.

MEMORANDUM.

Defendant appeals as of right a judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties were married late in life and essentially maintained separate finances. Only three issues were presented for trial. On appeal, defendant argues that the trial court erred in failing to award her a 1993 Lincoln Town Car and a survivorship interest in plaintiff's pension.

The distribution of property in a divorce is controlled by statute. *Reeves v Reeves*, 226 Mich App 490, 493; 575 NW2d 1 (1997). The court is empowered to divide the real and personal property that has come to either party by reason of the marriage. MCL 552.19. Generally, the marital estate is divided between the parties, and the parties each take their separate property without invasion from the other party. *Reeves, supra*, 494. The factual determination whether property is part of the marital estate is reviewed for clear error. *Byington v Byington*, 224 Mich App 103; 568 NW2d 141 (1997).

A spouse's separate estate can be opened when one of two statutorily created exceptions is met. *Reeves, supra* at 494. MCL 552.23 allows for the invasion of separate property if the assets of either party are insufficient to provide suitable support and maintenance of either party. MCL 552.401 allows invasion when the other spouse contributed to the acquisition, improvement, or accumulation of the property.

The trial court did not clearly err in finding that the car, purchased prior to the marriage, and the survivorship interest, earned before the marriage, were plaintiff's separate property to which defendant did not contribute. The court used its equitable powers to divide the interest in

* Circuit judge, sitting on the Court of Appeals by assignment.

the car. Defendant cannot show that a contingent interest in plaintiff's pension after his death is necessary for her support when she has no interest in that pension while plaintiff is alive. Defendant did not establish a statutory basis for invading plaintiff's separate property.

Affirmed.

/s/ Hilda R. Gage
/s/ Richard Allen Griffin
/s/ George S. Buth